

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

GOGEBIC MEDICAL CARE FACILITY,

Plaintiff-Appellant,

v

SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 79

Defendant-Appellee.

---

UNPUBLISHED  
November 4, 2003

No. 247112  
Gogebic Circuit Court  
LC No. 02-000168-CZ

Before: Meter, P.J., and Saad and Schuette, JJ.

PER CURIAM.

In this labor case, plaintiff, the employer, appeals as of right the January 3, 2003, grant by Gogebic Circuit Court Judge Roy Gotham of defendant's (the labor union) motion for summary disposition. We reverse and remand.

**I. FACTS**

Plaintiff, Gogebic Medical Care Facility, is a medical care facility authorized under the laws of the State of Michigan. The facility employs approximately 163 individuals and is a public employer for purposes of the Public Employment Relations Act (PERA), MCL 423.201 *et seq.* Defendant, Service Employees International Union, Local 79 (SEIU), is a labor organization that represents employees of plaintiff. Specifically defendant represents all full-time and regular part-time licensed practical nurses (LPNs) and graduate practical nurses, as well as persons awaiting Michigan registration who are hired to perform duties normally performed within the LPN classification.

On December 22, 1999, the parties entered into a collective bargaining agreement. The relevant portion of this agreement, article 31, provided:

If during the course of the contract year, the Gogebic Medical Care Facility Administration, or any of the Unions within the Facility, elect or are afforded the option of changing the current Retirement/Pension Plan, the members of SEIU will be afforded the same opportunity.

This agreement had an expiration date of January 31, 2001. On September 5, 2000, defendant issued a notice requesting modification of the collective bargaining agreement beyond this expiration date pursuant to the National Labor Relations Act (NLRA), § 8(d)(3).

On August 29, 2001, the parties executed a tentative agreement, which stated in part: "All contract provisions shall remain the same except as modified by this proposal." Article 31 remained unchanged by the new agreement. The parties dispute when this agreement went into effect. Defendant asserts that it became effective some time in October 2001, while plaintiff asserts that it did not become effective until January 2002.

Before this new agreement was reached between the parties, on July 30, 2001, the Gogebic County Family Independence Agency Board held a meeting, during which the board approved a motion to increase the administrator's county retirement multiplier to 2.25%, with the best three annual years of the last five. This change was not offered to members of defendant union. Defendant believed that this change should have been offered to its members under article 31 of their collective bargaining agreement. As a result, on November 12, 2001, defendant filed a grievance.

Plaintiff denied this grievance in part because it believed the grievance to be untimely and because it asserted that article 31 was specifically limited to pension changes during the contract year. It asserted that there was no collective bargaining agreement in effect on July 30, 2001, when the board made changes to the administrator's retirement multiplier. Plaintiff also contended that the term "administration" in article 31 did not include the administrator of the facility.

Following this denial, in January 2002, defendant filed a request for arbitration. Plaintiff responded to this request by asserting that the collective bargaining agreement had expired January 31, 2001. As a result, plaintiff stated, no arbitration clause existed between the parties and plaintiff refused to extend the collective bargaining agreement and intended to arbitrate grievances only as required under Michigan law. Plaintiff concluded that the grievance involved a dispute that arose outside an agreement to arbitrate and involved a benefit that did not vest or accrue during the previous collective bargaining agreement; hence, plaintiff believed this grievance should not be arbitrated.

Defendant then submitted a demand for arbitration with the American Arbitration Association (AAA), in which it alleged a violation of the pension provision of the previous collective bargaining agreement. AAA is currently holding the selection of an arbitrator in abeyance pending the resolution of this appeal. Plaintiff then brought this action in circuit court to prevent the arbitration. Plaintiff filed a motion for preliminary injunction. In response, defendant filed a motion for summary disposition. Defendant asserted that the original collective bargaining agreement did not expire on January 31, 2001, because on September 5, 2000, it sent a letter to plaintiff asking to modify or amend the existing agreement, as opposed to terminating the agreement. Defendant contended that the old collective bargaining agreement was in effect until the ratification of the new collective bargaining agreement. Thus, at the time of the grievance (July 30, 2001) plaintiff contends that no collective bargaining agreement was in effect, while defendant contends that a collective bargaining agreement was in effect.

The circuit court denied plaintiff's motion for preliminary injunction and granted defendant's motion for summary disposition. The court noted that the law provides that while the parties are in negotiations following the expiration of a contract, the terms and conditions and accrued and vested rights cannot be modified by management unless they have bargained those issues to an impasse. The court concluded that there remained an open question of law as to whether the right provided in article 31 would be considered an accrued and vested right. The court further stated that:

I do find and conclude that by virtue of reinstating the same provisions of the contract by agreement between the parties in the successor contract that the arbitration requirement was reinstated and very likely reinstated the obligation to resolve those disputes and grievances which may have occurred during that window between January 31<sup>st</sup> and the written signed and ratified contract in effect. For these reasons, I do not find that it's likely that the plaintiff will prevail on the merits, which is essential to granting a preliminary injunction and therefore, I deny the plaintiff's request for a preliminary injunction.

The court then granted defendant's motion for summary disposition. Plaintiff then filed a motion for reconsideration. The circuit court denied this motion, stating:

In its motion for reconsideration plaintiff asserts that the court did not directly address the question of whether the Article 31 "me too" provision regarding pension improvements was a vested pension right under *Gibraltar School District v Gibraltar MESPA-Transportation*, 443 Mich 326; 505 NW2d 214 (1993). It would certainly appear that the provision is not a vested pension right.

However, injunctive relief remains an equitable remedy, within the discretion of the court, to be granted only when justice requires, there is no other adequate remedy, and there exists a real imminent danger of irreparable harm. *Hamilton v AAA Michigan*, 248 Mich App 535, 541 [639 NW2d 837] (2001). This presumably remains true even in labor-management disputes.

In this case the original contract expired, but the parties continued operating pursuant to it until late July when plaintiff unilaterally took action which would have constituted a violation of the contract, then approximately one month later entered into a "table agreement" which continued or restored all of the relevant provisions of the contract pursuant to which the parties had been operating in an otherwise uninterrupted fashion. Plaintiff thus inequitably seized up on the briefest window of opportunity to unilaterally take action, and now argues that its behavior cannot be examined in arbitration. Plaintiff's formal restoration and confirmation of the contract undermines its claim of equity.

Plaintiff now appeals as of right.

## II. SUMMARY DISPOSITION

Plaintiff argues that it should not have to arbitrate a grievance filed by defendants because there was no collective bargaining agreement in effect at the time of the grievance and

the benefit involved was not accrued or vested. Plaintiff asserts that the trial court erred when it granted defendant's motion for summary disposition. We agree that the trial court erred in granting defendant's motion for summary disposition, but remand for an evidentiary hearing on the issue of whether the second collective bargaining agreement, including the agreement to arbitrate, had effect during the relevant period.

#### A. Standard of Review

Summary disposition may be granted under MCR 2.116(C)(7) if the claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment. This Court reviews a trial court's grant of summary disposition under MCR 2.116(C)(7) de novo. *Horace v Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998). In reviewing a motion under MCR 2.116(C)(7), this Court accepts as true all well pleaded allegations unless specifically contradicted by affidavits or other documentary evidence. *Stamps v Taylor*, 218 Mich App 626, 630; 554 NW2d 603 (1996). The pleadings and any documentary evidence offered in support of the motion are reviewed in a light most favorable to the nonmovant. *Id.*

#### B. Analysis

The trial court found that the collective bargaining agreement expired on January 31, 2001. However, the date that the new agreement became effective is in dispute. Defendant asserts that the new collective bargaining agreement became effective some time in October 2001, whereas plaintiff contends this agreement became effective in January 2002.

Plaintiff asserts that neither the first, nor the second collective bargaining agreement provided an agreement to arbitrate the present grievance. Plaintiff contends that had the parties wished the original agreement to extend until the new agreement was finalized, they would have agreed to extend this collective bargaining agreement past the January 31, 2001 expiration date. Further, plaintiff argues, had the parties wished their second collective bargaining agreement to cover the time period in question, they could have made it retroactive. The trial court, in its opinion on plaintiff's motion for reconsideration, concluded "[i]n this case, the original contract expired . . ."

Nonetheless, the right to grievance arbitration may survive the expiration of a collective bargaining agreement where an action taken after expiration infringes a right that accrued or vested under the expired agreement. *Gibraltar School Dist v Gibraltar MESPA-Transportation*, 443 Mich 326, 348; 505 NW2d 214 (1993). Here, however, the circuit court correctly found that article 31 did not constitute a vested right. Michigan courts have not provided a specific definition of a vested right as applied to this type of situation. Black's Law Dictionary, 6<sup>th</sup> ed, states:

"Rights are vested when the right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute a 'vested right.'"

Article 31 was a right that was specifically contingent upon a change in the retirement plan of the administration of Gogebic Medical Care Facility. Such a change did not occur during the time that either collective bargaining agreement was in effect. Thus, the trial court properly concluded that the right was not vested.

The trial court's conclusion that there was not a vested right is incongruous with its subsequent decision to grant defendant's motion for summary disposition. Without a vested right, the arbitration agreement does not survive the expiration of the collective bargaining agreement. *Gibraltar School Dist, supra*. The circuit court found that the original collective bargaining agreement had expired. Thus, the only way that the court could have found that the grievance should be arbitrated was by interpreting the parties' "table agreement" of August 29, 2001, to allow arbitration of any dispute that arose between January 31, 2001 and the time the agreement was ratified by the parties. However, the circuit court explains its decision only in the context of its denial of plaintiff's motion for injunctive relief. The court merely makes an equitable argument for this denial and with regard to the grant of summary disposition only stated, "[s]ince I deny the motion for injunctive relief, I will necessarily grant the motion for summary disposition to the defense."

Thus, it appears that the circuit court must necessarily have determined that the second contract applied retroactively, and allowed for arbitration of a grievance that arose out of actions that took place after the first collective bargaining agreement had expired, but before the second agreement had been ratified (based on either plaintiff or defendant's interpretation of that date). Such a determination required an interpretation of the facts and circumstances surrounding the formation of the second contract. These are facts and circumstances that are disputed by the parties. We must review the pleadings and any documentary evidence offered in support of the motion in a light most favorable to the nonmovant. *Stamps, supra*. Summary disposition pursuant to MCR 2.116(C)(7) was not appropriate at this stage because whether the arbitration clause was in effect was in dispute.

The trial court is instructed to hold an evidentiary hearing for the purpose of determining whether the second collective bargaining agreement was in effect at the time the grievance was filed (November 12, 2001). If it was in effect, the court is instructed to determine whether the agreement would allow for the arbitration of a grievance that arose from events that occurred on July 30, 2001.

Reversed and remanded. We do not retain jurisdiction.

/s/ Patrick M. Meter  
/s/ Henry William Saad  
/s/ Bill Schuette